

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant: Paul R. Higgens

Date application filed with the Town Clerk: May 30, 2007

Nature of request: To renew Special Permit ZBA FY2003-00039 for a flag lot under Section 6.3 of the Zoning Bylaw

Address: 269 Leverett Road (Map 3A, Parcel 100, R-O Zoning District)

Legal notice: Published on June 7 and 14, 2007 in the Daily Hampshire Gazette and sent to abutters on June 5, 2007

Board members: Thomas Simpson, Russell Frank and Albert Woodhull

Submissions: The petitioner submitted a site plan and common driveway plan which had been approved on 4/29/03 for the FY2003-00039 Special Permit

Site Visit: July 24, 2007

The Board met the applicant at the site and observed the following:

- Six frontage and three flag lots on a rural road in North Amherst, all but one (this flag lot) of which have been developed since the 2003 Special Permit hearing;
- The boundaries and flag lot under consideration, which is a large grassy field, a ravine with wetlands and a woods on the other side of the ravine in the back of the lot;
- The shared driveway which was built for access to the three flag lots and is now used by the two developed flag lots.

Public Hearing: July 26, 2007

Mr. Higgins represented himself at the hearing. He stated the following:

- He would like to renew the 2003 Special Permit for the flag lot;
- The Special Permit expired in 2005 because no significant building had occurred for this particular lot since the 2003 Special Permit was issued;
- The applicant purchased the property in January, 2007;
- The lot may not be built on within the next two years;
- He lives next door, and may wish to protect the open space of this flag lot;
- The previous owner, the Amherst Building Company, mistakenly thought that because the shared driveway had been built, that constituted significant building on the lot according to Section 10.37 of the Zoning Bylaw, and the Special Permit would not have to be renewed;
- The driveway, utilities and percolation test had been completed for the lot, but the Building Commissioner and his lawyer agreed that this did not constitute "significant development".

The Building Commissioner, Bonnie Weeks, said that there had been confusion by the previous owner, because one Special Permit had been issued for three flag lots. The homes for two of the flag lots had been constructed, so Amherst Building Company thought that renewal of the Special Permit was not necessary for the third lot.

Mr. Higgins confirmed that the confusion about the permit's expiration had occurred, and that he wishes to conform to the Bylaw requirements.

Mr. Frank raised the question that, if the Special Permit had expired two years ago, should the applicant be applying for a new Special Permit and not a renewal of an old one.

Ms. Weeks stated that the process is the same in this case, renewal or new permit. The applicant must meet all the conditions of Section 6.3 of the Bylaw for flag lots.

Mr. Simpson made a motion to close the evidentiary portion of the hearing. Mr. Frank seconded the motion, and the vote was unanimous to close the hearing.

Public Meeting:

In considering this proposal, the Board noted that nothing had changed with this lot since the FY2003 Special Permit, and that the findings under Section 6.3 of the Bylaw are met. That is:

- Section 6.32 - the area of the flag lot, exclusive of the access strip, is double the minimum lot area required for that district. That is, the required buildable area is 60,000 square feet and this lot has 91,471 square feet in area;
- Section 6.33 – the access strip has a street frontage of forty feet and is approximately 160 feet in length. (The maximum length allowed is 400 feet);
- Section 6.34 and 6.35 – the buildable area has a diameter at least 150 feet, the street frontage required in an R-O district. The lot exceeds 150 feet in all directions and easily contains a buildable circle with 150' diameter;
- Section 6.36 and 6.37 – There are no more than three adjacent flag lots, and they share a common driveway, as conditioned in Special Permit FY2003-00039.

The Board noted that the Conservation Commission Order of Conditions has expired for the flag lot. Prior to any construction on the lot, the applicant will need to submit a new Notice of Intent to the Conservation Commission and receive a new Order of Conditions for the wetlands.

Findings:

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 and 10.381 – The proposal is suitably located in the neighborhood and is compatible with existing uses because the flag lot was designed in relation to two other flag lots and six frontage lots that have been developed and are easily assessable.

10.382 and 10.385 – The proposal would not constitute a nuisance and reasonably protects the adjoining premises against detrimental or offensive uses on the site because the lot is very large and will have only a single family house on it.

10.383 and 10.387 – The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians and the proposal provides convenient and safe vehicular and pedestrian movement within the site and in relation to adjacent streets because the shared driveway is open, flat, has good visibility and has been used successfully for several years by residents of the other two flag lots.

10.393 – The proposal provides protection of adjacent properties by minimizing the intrusion of lighting because external lighting shall be downcast, as required by this permit.

10.397 – The proposal provides adequate recreational facilities, open space and amenities for the proposed use because the lot is very large with a mixture of open and wooded space.

10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw because it protects the health, safety, convenience and general welfare of the inhabitants of the Town of Amherst.

Public Meeting – Zoning Board Decision

Mr. Simpson made a motion to APPROVE the Special Permit renewal, with conditions. Mr. Frank seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to renew Special Permit ZBA FY2003-00039 for a flag lot under Section 6.3 of the Zoning Bylaw at 269 Leverett Road (Map 3A, Parcel 100, R-O Zoning District), as requested in the application filed by Paul R. Higgins, with conditions.

THOMAS SIMPSON

RUSSELL FRANK

ALBERT WOODHULL

FILED THIS _____ day of _____, 2007 at _____,
in the office of the Amherst Town Clerk _____.

TWENTY-DAY APPEAL period expires, _____ 2007.
NOTICE OF DECISION mailed this _____ day of _____, 2007
to the attached list of addresses by _____, for the Board.

NOTICE OF PERMIT or Variance filed this _____ day of _____, 2007,
in the Hampshire County Registry of Deeds.

**Town of Amherst
Zoning Board of Appeals**

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit to renew Special Permit ZBA FY2003-00039 for a flag lot under Section 6.3 of the Zoning Bylaw, at 269 Leverett Road (Map 3A, Parcel 100, R-O Zoning District), as requested in the application filed by Paul R. Higgins, subject to the following conditions:

1. The driveway for the flag lot (Lot #8 on the site plans) shall be designed and maintained as approved by the Board at a public meeting on November 20, 2003.
2. Any dwelling that will be constructed shall be limited to a single family house.
3. Prior to construction, the location of the house and any outbuildings shall be shown on a site plan submitted for approval by the Board at a public meeting.
4. All exterior lighting shall be downcast.
5. This Special Permit is subject to Article 14, Phased Growth, of the Zoning Bylaw. The Development Authorization date is available as of September, 2007.

THOMAS SIMPSON, Chair
Amherst Zoning Board of Appeals

DATE